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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SAMUEL LOVE,

11 Plaintiff,

12 vs.

13 THE SOCO GROUP, INC., a
California corporation,

14 Defendant.

CASE NO. 14-cv-2764-CAB (RBB)

ORDER DENYING EX PARTE
MOTION TO STAY

[Doc. No. 8]

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16 This matter comes before the court on defendant's ex parte application for a stay
17 and for an early evaluation conference or mandatory settlement conference. [Doc. No.
18 8.] Plaintiff responded in opposition. [Doc. No. 9.] For the following reasons,
19 defendant's motion is denied, and the court will follow its normal procedures for
20 scheduling an Early Neutral Evaluation Conference, as set forth in Civil Local Rule
21 16.1(c).


22 Plaintiff, a California resident with physical disabilities, filed his complaint on
23 November 20, 2014. [Doc. No.1.] He asserts claims for violations of the Americans
24 with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, Unruh Civil Rights Act, Cal. Civ. Code
25 §§ 51–53, and California Disabled Persons Act, Cal. Civ. Code §§ 54–54.8, as well as
26 a common-law claim for negligence. Defendant is the alleged owner, operator, lessor,
27 or lessee of a Shell gas station, which plaintiff alleges lacks a compliant parking space
28 for persons with disabilities who drive vans. [Doc. No. 1 ¶ 9.]

1 On January 26, 2015, defendant filed its answer. [Doc. No. 7.] The same day,
2 defendant filed its pending ex parte motion to stay. [Doc. No. 8.] Defendant seeks a
3 stay of ninety days so that the parties may participate in an early evaluation conference,
4 pursuant to California Civil Code section 55.54(d).

5 As plaintiff notes in opposition, the federal district courts to address the issue
6 have held that the provisions of section 55.54(d) are procedural, not substantive, and
7 therefore inapplicable in federal court under *Erie* doctrine. *See O'Campo v. Chico*
8 *Mall, LP*, 758 F. Supp. 2d 976, 984 (E.D. Cal. 2010) (citing *Erie R. Co. v. Tompkins*,
9 304 U.S. 64, 78 (1938)).¹ This court agrees with the reasoning of these cases and
10 **DENIES** defendant's ex parte application. An Early Neutral Evaluation Conference
11 will be scheduled in due course, pursuant to Civil Local Rule 16.1(c).

12 **IT IS SO ORDERED.**

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14 DATED: January 28, 2015

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17 **CATHY ANN BENCIVENGO**
18 United States District Judge
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26 ¹ *See also Oliver v. Hot Topic, Inc.*, No. 10CV1111 BEN AJB, 2010 WL 4261473, at *1 (S.D.
27 Cal. July 27, 2010) *Daubert v. City of Lindsay*, No. 1:14-CV-00068, 2014 WL 3938762, at *10 (E.D.
28 Cal. Aug. 11, 2014); *Moreno v. Vohra*, No. 1:14-CV-00539 AWI, 2014 WL 2721770, at *1 (E.D. Cal.
June 16, 2014); *Lamark v. Laiwalla*, No. CIV. 2:12-3034 WBS, 2013 WL 3872926, at *1 (E.D. Cal.
July 25, 2013); *Moreno v. Town & Country Liquors*, No. 2:12-CV-00729 JAM, 2012 WL 2960049,
at *4 (E.D. Cal. July 19, 2012).